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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

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## No. 1288

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ENGLAND, ET AL.,

Appellants,

*versus*

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL.,

Appellees.

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## *APPLICATION FOR REHEARING*

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## *APPLICATION FOR REHEARING*

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Plaintiffs-Appellants respectfully pray that a rehearing be granted to them in respect to the decision of this court of June 20, 1966, affirming the decision of the United States District Court, Eastern District of Louisiana, in support whereof plaintiffs-appellants respectfully represent that:

1. THE AFFIRMANCE OF THE DECISION APPEALED FROM OPERATES TO DECLARE A NATIONAL POLICY, AS THE SUPREME LAW OF THE LAND, IN THE AREA OF THE HEALING ART, WHICH COMPELS ALL PHYSICIANS, INCLUDING CHIROPRACTIC PHYSICIANS, PROPERLY EDUCATED AND TRAINED IN ACCEPTABLE THERAPY, TO HOLD THE VERY MEANS OF THEIR PROFESSIONAL EXISTENCE AT THE MERE WILL OF ALLO-

PATHIC PHYSICIANS, REPRESENTING A MERE SECT OF THE HEALING ART, CONTRARY TO THE CONSTITUTIONAL DOCTRINES OF *Yick Wo v. Hopkins*, 118 U.S. 355; *Dent v. West Virginia*, 129 U.S. 114, 9 S. Ct. 231, 32 L. Ed. 628; *Jacobson v. Mass.*, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643; *Watson v. Maryland*, 218 U.S. 173, 30 S. Ct. 644, 54 L. Ed. 987; *Graves v. Minn.*, 272 U.S. 425, 47 S. Ct. 122, 71 L. Ed. 331; *Williamson v. Lee Optical Company*, 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563 AND *Douglas v. Noble*, 261 U.S. 165, 43 S. Ct. 303, 67 L. Ed. 590.

This decision, in the face of an undisputed evidentiary record, demonstrating the existence of a fundamental difference between the therapeutic concepts and practices of allopathy as opposed to chiropractic, establishes, nevertheless, compulsory conformity in the treating of human ailments, by sanctioning state law which makes it virtually impossible[1] for a qualified physician to be licensed to engage in the practice of any concept of treatment other than the allopathic concept. Though properly educated and trained as a chiropractic physician, an applicant for license to engage in the treatment of ailing persons by chiropractic therapy, must first stand an examination in treatment by drugs and surgery, a therapeutic regimen of allopathy only. Though a graduate and holder of a diploma

[1] An applicant for license under the Louisiana Medical Practice Act, because of excessive administrative demands, must produce a diploma from a college approved by the American Medical Association. The evidentiary record shows, without dispute, that one may acquire a knowledge of chiropractic only in a chiropractic college. No chiropractic colleges are approved by the American Medical Association. Only colleges teaching the theory and practice of allopathy are approved by the American Medical Association. Consequently, a chiropractic physician must therefore be a graduate of both colleges before he would even be permitted to stand an examination in subjects of therapy that are exclusively related to allopathy. This arbitrary administrative demand imposes upon a chiropractic physician unreasonable study and application and therefore violates the constitutional principle of *Dent v. State of West Virginia*, (1889) 129 U.S. 114, 9 S.Ct. 231, and is itself unconstitutional.

from a college in good standing teaching chiropractic, an admitted sect of the healing art, he is not even permitted to stand such an examination, not because of the state law, but the allopathic physicians on the board which administers the law go beyond the outer limits of the law[2] and arbitrarily require the production of a diploma from college approved by the American Medical Assoc., a private corporation operated by allopathic physicians only.

MORE THAN THIS, immediately following the issuance of the decision appealed from in this case, the president of the Louisiana State Medical Society (a society of allopathic physicians only) and a witness in this case, made a public call, over all news media, to the district attorneys and law enforcement officials of Louisiana for the immediate criminal prosecution of all chiropractic physicians in Louisiana, citing the court's decision as the edict for an open season for such pastime frolics.[3] Immediately

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[2] Louisiana Revised Statute, Title 37, Section 1271 provides: "Any person who wishes to practice medicine shall: * * * (4) Present to the board a diploma from a college in good standing of ANY SECT teaching medicine or the healing art: * * *"

[3] The following Associated Press report appeared in the November 12, 1965, issue of the *Times Picayune Newspaper* of New Orleans, Louisiana: "Baton Rouge, La. (AP)—The president-elect of the Louisiana State Medical Society called Thursday for district attorneys and sheriffs to arrest chiropractors for practicing without a state license.

"Dr. Joseph Sabatier of Baton Rouge said a federal court ruling in New Orleans Thursday frees state and local authorities to move against chiropractors.

"A three-judge panel held that the State Board of Medical Examiners has the authority to refuse licenses to chiropractors who do not have medical degrees.

"Since Louisiana law requires persons practicing any of the healing arts to be licensed by the medical examiner board, the chiropractors argued that they were being discriminated against. In their suit, they contended the discrimination deprived them of their rights unfairly in violation of the 14th Amendment to the federal constitution.

"The suit has been in the courts for the past eight years. During that time, by agreement, no effort has been made to enforce the law against chiropractors, Dr. Sabatier said.

"The federal court dismissed the suit, holding that the Louisiana Medical Practices Act was constitutional as it applied to chiropractors. This act requires chiropractors to have medical degrees and to pass surgery tests administered by the board in order to be licensed.

"The federal court ruling, said Dr. Sabatier, 'will permit prosecu-

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following the affirmance by this court of the lower court decision, another public call was made to the same law enforcement officials to pick up chiropractic physicians in Louisiana as common criminals; this time it was defendants' counsel who acted as spokesman for the autocratic allopathic group.

Thus, already heavily ladened by the burden of arbitrary police power inherent in the state law and the excessive administrative action pursued thereunder, plaintiffs and all chiropractic physicians of Louisiana face the prospect in the immediate future of bearing the brunt of the police stick, and the indignity and privation of being herded into dingy jail cells, all because they wish to accommodate the ailing patient's reasonable choice of the type treatment he wants for his ailments, that are incurable by drugs and the surgeon's knife.

As the law of the land, should this decision stand, this nightmarish circumstance will have the capability of being imported to the other states of the Nation[4] and expanded to include all other acceptable modes of treatment,

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[3] (Continued)
tion of them by authorities for practicing medicine without a license. We think our district attorneys and sheriffs will uphold the law.'

"He said the number of chiropractors in Louisiana has increased from 13 in 1952 to 278 today.

"Officials of the State Chiropractors Association could not be reached for comment on the federal court ruling."

[4] The American Medical Association already has declared war for the total annihilation of the chiropractic profession throughout the United States. The battle cry is "quackery." The following news release appearing in the April 18, 1966, issue of *The Oregonian* reports the statement of Doyle Taylor, investigator for the American Medical Association, as follows:

"CHICAGO—The American Medical Association is making chiropractors its primary target in a national campaign against medical quackery, according to the Association's chief investigator.

"In the past the AMA has been somewhat reserved in its pronouncements about chiropractors, but investigator Doyle Taylor assailed them as 'cultists who deny the very premises of scientific medicine.'

"Chiropractors in general have little scientific medical education, he said, and the nation's schools for chiropractors are staffed mostly

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differing from allopathy, so that in the end no American citizen will enjoy the freedom to be treated by any methods or means other than drugs and the knife, the thalidmide tragedy, for example, notwithstanding.

2. NO STATE, EITHER BY SOPHISTICATED OR SIMPLEMINDED MODES, CAN CONSTITUTIONALLY DENY A CITIZEN OF THE RIGHT TO PRACTICE A USEFUL PROFESSION OR THE COROLLARY RIGHT TO THE REASONABLE CHOICE OF THE TYPE TREATMENT HE DESIRES FOR HIS AILMENTS. *England v. Louisiana State Board of Medical Examiners*, 259 F. 2d 626, 627.

Monopoly in medical treatment, if permitted, poses a threat to the national interest. No particular group or discipline of the healing art possesses a therapeutic panacea. There resides in each a certain inadequacy and a certain risk.[5] Unlike defendants' pose of omniscience, a more objective observer and an outstanding authority of

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[4] (Continued)
by persons who have no degrees from accredited institutions.
"Taylor told a conference on health education of the public here Saturday that the AMA's committee on quackery considers the chiropractic problem the biggest it faces in an education drive on medical quacks. He said the AMA will seek revisions of licensing requirements in the 47 states that license the practice. They will also seek legislation requiring stiffer educational standards for chiropractors."
Needless to say, the biased statement as to the qualification of chiropractic physicians is unfounded in fact.

[5] For an alarming account of the needless deaths and iatrogenic disease consequent to allopathic drugging, the reader is directed to the book entitled *Diseases of Medical Progress*, 2nd Edition, edited by Robert H. Moser, M.D., and contributed to by twelve other medical physicians, which book is made part of the evidence in this case. At page 3, the authors exclaim:
"Tons of antibiotics are produced annually; the clinician is offered hundreds of different preparations. * * * The problem of antibiotic-induced diseases has grown each year until it has assumed major proportions."
The indiscriminate administration of drugs results in an alarming useless treatment by drug. These authors say: (p. 3) "It has been estimated that in only one of ten instances are antibiotic given on the basis of proper indications. * * * Rosenthal reviewed *thirty* cases of

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the allopathic profession, John McM Mennell, M.D., Special Lecturer, Department of Physical Medicine, Medical School, College of Medical Evangelist, Los Angeles, California, summarizes a peculiar inadequacy of the allopathic sect of medicine in the following words as appears on page 5 of his book *Back Pain:*

> "If our nation of scientists and engineers had been as slow in their inquiries into the mysteries of outer space as our profession has been in its inquiry into the mysteries of joint spaces, our country would surely have degenerated into a second rate power. Our profession has been rapidly losing

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[5] (Continued)
fatal penicillin anaphylaxis in 1958 and found adequate indication for therapy in only *twelve*. * * *

"Hypersensitivity reactions and illnesses resulting from drug toxicity make up two major categories of antibiotic-induced diseases. A third results from emergence of antibiotic-resistant microorganisms following suppression of normal bacterial flora by antibiotics."

Morton Mintz, the Washington Post reporter who broke the story of the thalidmide tragedy, in his book, *The Therapeutic Nightmare*, at page 2 records that the United States Public Health Service reports that each year there occurs 1,368,000 nonfatal, so-called therapeutic misadventures occasioned by the ingestion of drugs, including vaccines. He reports: "(p. 2) Indeed, by 1960, at least 40 new diseases or syndromes had been attributed to drugs used in therapy."

At pages 11-12 Mintz records the testimony of Dr. Albe M. Watkins, whose son died from a prescribed dosage of Chloromycetin, given before the California Senate Committee, in respect to which he said: " 'I do not know of one single victim who wouldn't be alive today had he only been permitted to get well by himself, by nature, without the use of this antibiotic * * *.' "

Dr. Franklin Farman, a Whittier urologist, told the state senate committee: " 'We lost our daughter—5 years old—through the administration of Chloromycetin . . . Her death was one of many similar cases of blood dyscrasias (which) have not been recognized. * * * I know of no more torturous death, especially in children * * *.' "

At page 51, the author recalls President Kennedy's statement in 1962 that, "more than 20 per cent of the new entities listed since 1956 in the Council's New and Nonofficial Drugs had been found " 'incapable of sustaining one or more of their sponsor's claims.' "

At page 73, the admonition of Dr. Lawson Wilkins given to his fellow pediatricians of the American Pediatric Society is recorded in these words: "One of the great shortcomings of our medical teachers of the present generation is a failure to inculcate into students and interns a cold, scrutinizing, skeptical state of mind which would make them leery of accepting any therapeutic claim without proof. If the young physician were less credulous and gullible he would be less enthusiastic about trying every new sample of the 400 new drugs handed to him annually, and he might do less damage to his patients."

The reader is referred specifically to pages 98, 165, 185, 220, 245, 249, and 269-270 for additional outstanding examples of a similar nature.

ground to other groups who practice the healing art in all problems concerning joint pains, but, particularly in the field of back pains."

Page 9:

"When we recognize that there is scarcely a disease known to medicine which may not bring a patient to his doctor with a chief complaint of back pain, the importance of being able to rule out with confidence any structure in the back as being the seat of that pain becomes apparent."

Page 11:

"The fascination of dealing with back problems is a never ending source of pleasure mingled with anxiety and should be most attractive to both the undergraduate and postgraduate students. Yet, in medical schools and resident training programs students look askant at anyone who is attracted by these problems and with horror when they are faced with such problems themselves. This reaction is only because they are exposed to **no teaching on the subject,** they are offered **no method of clinical examination** by which they can assess the problem, and they are **not exposed to any useful** method of treatment which can ever positively be said to cure these patients."

In his other book, *Joint Manipulation* at page 1, the author says:

"The fact however remains that people who have no connection with the medical profession, or its preliminary training of the basic sciences, have been treating patients with success when orthodox treatment has often failed; and it behooves us, once and for all, to try to decide what is good in joint manipulation * * * ."

This vacuum of knowledge, indigenous to the allopathic concept of therapy, encompasses that area of treatment that falls within the professional domain of the chiropractic discipline of the healing art. The chiropractic

mode of treatment is the only therapy that brings about effective body response or restoration of health, where the pathogenesis of body ailments or disease resides in joint spaces and allied structural derangements. This therapy, by virtue of the state law involved, is sought to be denied to every citizen of Louisiana, based on no rational or reasonable grounds.

Scientific and statistical data, abounding in diverse publications, indicate, not only a doubt as to the overall efficacy and safety of drug therapy, but that under no circumstances should the Nation fall victim to the adventurous notion of instituting such a mode of treatment as a standard for all others. To be sure thereby we are induced to the inescapable conclusion that the promotion and judicial protection of other less radical, less dangerous, and in many instances, more efficacious, non-drug modes of treatment must be assured, lest the public at large be totally stripped of any voice in the type treatment desirable and left with the inefficient alternative of stoically enduring the sufferings of physical ailments or of submitting to a mode of treatment capable of producing physical consequences more lasting and disabling than the original ailments. . .

3. THE FAILURE OF THE COURT TO APPLY THE BASIC PRINCIPLE THAT "A GOVERNMENTAL PURPOSE TO CONTROL OR PREVENT ACTIVITIES CONSTITUTIONALLY SUBJECT TO STATE REGULATION MAY NOT BE ACHIEVED BY MEANS WHICH SWEEP UNNECESSARILY BROADLY AND THEREBY INVADE THE AREA OF PROTECTIVE FREEDOMS," *Aptheker v. Secretary of State*, 378 U.S. 500, 508, 84 S. Ct. 1659, 1664; *Schware v. Board of Bar Examiners*, 353 U.S. 234, 239, 77 S. Ct. 752, 756, 1 L. Ed. 2d 796, DENIES TO PLAINTIFFS EQUAL JUSTICE, CON-

TRARY TO THEIR CONSTITUTIONAL RIGHTS AND IMMUNITIES.

Predictably, the Louisiana State Legislature during its current legislative session, surrendering to the hostile and overwhelming demands of the politically powerful collection of allopathic physicians, again refused to enact legislation, pressed upon it by plaintiffs, that would provide for the effective regulation of the chiropractic profession of Louisiana by means more narrowly adaptable to plaintiffs than the unconstitutionally broad provisions of the state statute assailed in this lawsuit. This is but the familiar product of the persistent and perennial recrudescence of the vitriolic opposition of the allopathic profession, whose capability for mobilizing and mesmerizing state legislators into carrying out its campaign to abjectly oppress the chiropractic profession has been and remains as the most outstanding ignominious political phenomenon of the past forty odd years of Louisiana history. The 1876 Constitutional Doctrine of remitting citizens to the polls for redress of grievances exemplified by *Munn v. Illinois*, 94 U.S. (4 Otto) 113, 154, has been a source of no comfort to plaintiffs. To the contrary, their constitutional right to engage in the practice of their useful profession has consistently been infringed by a majority of the people, acting through their state legislators, contrary to the constitutional doctrine of *Lucas v. 44th General Assembly of the St. of Colorado*, 377 U.S. 713, 84 S. Ct. 1459.

The undisputed evidentiary record in this case at bar demonstrates that the examination requirements for qualification under the state statute, as administered, relate exclusively to the mode of treatment peculiar only to the allopathic concept of medicine. As administered, therefore, the requirements of the statute compel an applicant to practice as a chiropractic physician to first qualify as an allopathic

physician. Such a broad reach, induced by administrative excesses, invades the area of protected freedoms, because it establishes an arbitrary requirement that makes it impossible for a chiropractic physician to legally practice his profession in the State of Louisiana. Such a result is proscribed by the constitutional principle exemplified by *Aptheker*.

## CONCLUSION

With the advent of the prospective wholesale criminal prosecution of all chiropractic physicians in the State of Louisiana, who are without any recourse whatever, and the evident intent of the American Medical Association to effect the repeal of the chiropractic licensing statutes of the forty-eight states of the Nation, there exists in this case substantial federal questions of overriding national significance, which, in plaintiffs' respectful judgment, requires the granting of a rehearing, in order to vindicate and protect plaintiffs' constitutional rights and to forestall the prospective territorial expansion of the constitutional disfranchisement extant in Louisiana as regards chiropractic physicians vis a vis allopathic physicians.

Respectfully submitted,

s/ J. Minos Simon

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## CERTIFICATE OF GOOD FAITH

I, J. Minos Simon, attorney for plaintiffs-appellants, herein, and a member of the bar of the Supreme Court of the United States, hereby certify that the foregoing application for rehearing is filed in good faith and not for delay.

Lafayette, Louisiana, this 11th day of July, 1966.

/s/ J. Minos Simon

J. MINOS SIMON,
Post Office Box 52116 OCS,
1408 Pinhook Road,
Lafayette, Louisiana.

## PROOF OF SERVICE

I, J. Minos Simon, one of the attorneys for plaintiffs, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 11th day of July, 1966, I served copies of the foregoing application for rehearing on the several parties hereto as follows:

1. On the Louisiana State Board of Medical Examiners, et al, defendants, by mailing copies in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, W. Ford Reese, Esquire, Adams and Reese, Attorneys at Law, 1808 National Bank of Commerce Building, New Orleans, Louisiana, and Robert F. LaCorgne, Jr., Esquire, Attorney at Law, National Bank of Commerce Building, New Orleans, Louisiana.

2. On Louisiana State Medical Society, intervenor, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to its attorneys

of record, Phelps, Dunbar, Marks, Claverie & Sims, Esquires, 420 Hibernia Bank Building, New Orleans, Louisiana.

S/ J. Minos Simon

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